

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CRIMINAL CASE NO. 1:17-cr-00040**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**JOSEPH SAMUEL DAVIS and  
LEROY MILLER, Jr.,**

**Defendants.**

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**ORDER**

**THIS MATTER** is before the Court on Defendant Miller's Unopposed Motion to Continue Jury Trial and Motion to Seal Declaration. [Doc. 34].

On April 4, 2017, the Defendants were charged in a Bill of Indictment. [Doc. 1]. Defendant Joseph Samuel Davis ("Defendant Davis") was charged with one count of conspiracy to commit Federal Program Fraud in violation of 18 U.S.C. § 666. [Doc. 1]. Defendant Leroy Miller, Jr., ("Defendant Miller") was charged with one count of conspiracy to commit Federal Program Fraud in violation of 18 U.S.C. § 666, one count of Federal Program Fraud in violation of 18 U.S.C. § 666(a)(1)(B), one count of extortion under color of official right in violation of 18 U.S.C. § 1951, and one count of witness tampering in violation of 18 U.S.C. § 1512(b)(3). [Doc. 1].

The Defendants' initial appearances and arraignments were held on April 12, 2017, at which time the Magistrate Judge appointed counsel for the Defendants and the case was placed on the May 1, 2017 calendar for trial. The Magistrate Judge then continued the case pursuant to 18 U.S.C. § 3161(c)(2) to the June 19, 2017 trial term. On June 6, 2017, the Court continued the case to the September 5, 2017 trial term. [Doc. 24]. On August 18, 2017, the Court continued the case to the November 6, 2017 trial term. [Doc. 27]. On October 25, 2017, the Court continued the case to the January 2, 2018 trial term. On November 21, 2017, the docket call in this matter was reset to the January 3, 2018 trial term. On December 19, 2017, the matter was continued to its current setting during the March 5, 2018 trial term. [Doc. 33].

Defendant Miller now moves to continue the case and to seal a declaration filed in support of the motion to continue. [Doc. 34]. As grounds, counsel states that additional time is needed because of personal circumstances of Defendant Miller that are outlined in a declaration counsel filed under seal in support of the motion to continue. [Doc. 35]. Counsel represents that the Government does not oppose the requested continuance. [Doc. 34]. Defendant Davis filed a response to Defendant

Miller's motion to continue in which he states he has no objection to the case being continued as requested by Defendant Miller. [Doc. 36].

Based on and in light of the information presented in the sealed declaration presented in support of Defendant Miller's motion to continue, the Court finds that the case should be continued and that Defendant's motion to seal the declaration should be granted. The Court finds that, under the circumstances, a failure to continue the case would result in a miscarriage of justice. See 18 U.S.C. § 3161(h)(7)(A).

The Court finds the case should also be continued with respect to Defendant Davis. Because no motion for severance has been granted, the continuance of co-Defendant Miller's case justifies the continuance of Defendant Davis' case as well. See 18 U.S.C. § 3161(h)(6) (allowing for exclusion of "a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.").

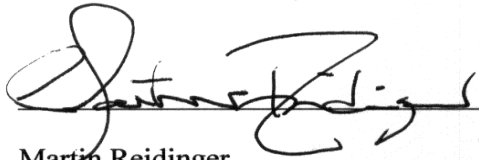
For the reasons stated herein, the ends of justice served by the granting of the continuances outweigh the best interests of the public and the Defendants in a speedy trial. See 18 U.S.C. § 3161(h)(7)(A).

**IT IS, THEREFORE, ORDERED** that Defendant Miller's Unopposed Motion to Continue Jury Trial and Motion to Seal Declaration [Doc. 34] is

**GRANTED**, and the above-referenced Defendants are hereby **CONTINUED**  
from the March 5, 2018 term in the Asheville Division.

**IT IS SO ORDERED.**

Signed: February 20, 2018

  
Martin Reidinger  
United States District Judge

